Good morning and welcome!

The program will begin shortly.

Two Options Demystified: Private Family Trust Company and Family Bank Dynasty Trust

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Co-Chairman and Co-Chief Executive Officer

Al W. King III is based in New York City and the Co-Founder, Co-Chairman and Co-Chief Executive Officer of South Dakota Trust Company, LLC (SDTC), South Dakota Planning Company, LLC (SDPC) and the Estate Planning Institute (EPI). South Dakota Trust Company is a national trust boutique for the wealthy based out of Sioux Falls, South Dakota serving clients nationally and internationally.

Mr. King was previously Managing Director and National Director of Estate Planning for Citigroup. Mr. King was also the Co-Founder and Vice Chairman of Citicorp Trust South Dakota. Mr. King also previously served as Director of Financial and Estate Planning for Coopers and Lybrand in Stamford, Connecticut.

Prior to joining Coopers and Lybrand, Mr. King was a Vice President and Director of Financial and Estate Planning with Shawmut Bank and the Northeast Director of Financial and Estate planning for Prudential-Bache Securities. Mr. King was also a Senior Staff Attorney/Financial Counselor with the AYCO Corporation, a fee-based financial counseling firm.

Mr. King is the Co-Vice Chairman of the Editorial Board of *Trusts and Estates Magazine*. He has been a member of the Editorial Board for 20 years. Mr. King has been inducted into the National Association of Estate Planners & Councils (NAEPC) *Estate Planning Hall of Fame* as an Accredited Estate Planner (AEP), Distinguished. In addition, Mr. King currently serves on the board of directors for the NAEPC and the NAEPC Foundation. He is also a member of several groups and organizations including the Society of Trust and Estate Professionals (STEP), the International Association of Advisors in Philanthropy (AiP), New York Philanthropic Advisors Network (NYPAN), Fairfield County and New York City Estate Planning Councils, etc. In addition, he is frequently published and quoted by several publications on various Estate Planning topics and addresses several professional organizations, special interest groups, and general audiences on the subject of estate and financial planning.

Mr. King received a Bachelor of Arts cum laude from Holy Cross College, a Juris Doctor from Syracuse University Law School and an LL.M. in Tax Law from Boston University School of Law.

Matt Tobin

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Matthew Tobin is the Managing Director/Legal Counsel of the South Dakota Trust Company, LLC in Sioux Falls, South Dakota. His primary responsibilities include management of the firm's Private/Public Trust Company business, business management, legal, human resources, and public relations/legislation. He also serves as President of SDTC Services, LLC which provides consulting services to the nondepository trust company industry, and serves as Director of the SDTC Foundation. In addition, Mr. Tobin also serves on the Board of Directors for numerous private and public trust companies.

Mr. Tobin was formerly a member of the law firm Siegel, Barnett & Schutz, LLC where his private law practice focused on general and business litigation. He also received considerable experience in negotiations, mediation, and alternate dispute resolution. Prior to joining Siegel, Barnett & Schutz, Mr. Tobin was a partner in the law firm of Johnson, Heidepriem, Miner, Marlow & Janklow, LLP.

Mr. Tobin attended St. John's University in Collegeville, Minnesota, and received his Bachelor of Arts degree in 1994 with an emphasis in political science/government and economics. Mr. Tobin worked for United States Senator Thomas Daschle in Washington, D.C. and in the field office in Sioux Falls, South Dakota.

Mr. Tobin attended the University of South Dakota School of Law and received his Juris Doctor in 1998. While in law school, he received the Cali Award for Excellence, was a member of the Dean's List, was a member of the Moot Court Board, and served as the director of the R.D. Hurd Volunteer Law Society. After graduation from law school, Mr. Tobin served as a law clerk for the Honorable Roger Wollman, Chief Judge, U.S. Court of Appeals, Eighth Circuit, from 1998 to 1999. He is a member of the State Bar of South Dakota, and actively serves on the bar's business law committee.

Mr. Tobin is married (Tara) and enjoys spending time with his wife and children. He also enjoys sports, traveling, hunting, golf and coaching youth hockey.

Private Trust Companies Introduction

- A **growing** and **popular** **trend** among **families** is the **creation** of their **own** **trust company** to **serve** as **trustee** for their trusts.
- A **private trust company** can be **designed** to **meet** the **dynamic needs** of any **family**.
- Providing **continuity**, **formality**, and **structure** **without** **disrupting** the normal **functions** of the **traditional family office**.

What is a Private Family Trust Company?

- A **Private Family Trust Company** (PFTC) is a family-owned entity (e.g. LLC) authorized by state or federal law to operate as a trust company serving their family as trustee for family trusts.

- **Structured like a corporation**:
  - Shareholders
  - Board of Directors/Board of Managers
  - Investment Committee
  - Distribution Committee

Family Members and Trusted Advisors

When Does a Family Create a Private Family Trust Company?

- **Net worth**:
  - **Generally** – dynamic and dynastic family with $200 million and above (some exceptions);
- **Families** where **family members and individuals** are **named** as **trustees** for family's trust(s);
  - Personal liability;
- **Families experiencing issues** with **bank/institutional trustees**;
- **Allows** for a **sophisticated asset diversification** model (i.e., Yale Endowment, FOX, IPI);
- **Illiquid assets in trust** (i.e. closely-held stock, real estate, oil & gas interests, gambling interest, etc.);
- **Privacy**.

Advantages of the Family of a Private Trust Company

1. Provides **control** and **continuity** to family trust administration = permanent trustee;
   - Resolution of **successor trustee issues**;
2. Better family **governance** – provides control over decision makers and succession;
3. Absolute **privacy**;
4. **Exempt** from registering as an **investment advisor** with SEC - entity has all the powers of an SEC regulated entity without SEC registration;
5. May offer **tax efficiency** by locating in a state without state income tax (South Dakota) or capital gains tax on trusts;
6. Increased **liability** protection – important when recruiting family members and advisors to serve – may obtain D&O insurance for even greater protection;
7. Services can be **tailored** and **responsive** to specific family needs;
8. May provide **employment** opportunities for family members;
9. Provides excellent vehicle for complete **investment flexibility** unlike the rigidity of institutional corporate fiduciaries; and
10. **Planning opportunities for deducting investment fees** (in light of the *Knight* case, a decision by the U.S. Supreme Court).

Private Family Trust Companies – Regulated Versus Unregulated

	Regulated	Unregulated
Best states	South Dakota, New Hampshire	Wyoming, Nevada
Regulatory authorities	South Dakota – excellent & experienced (since 1995) Wyoming – Okay, only 2 regulated WY PTCs (better with unregulated) Nevada – New Legislation (2009) New Hampshire – New (2006)	Nevada – None, unless problem (2009 Legislation) Wyoming – Minimal
State Banking Accreditation **(Conference of State Banking Supervisors)**	South Dakota – Yes Nevada - No New Hampshire – No Wyoming – Yes	Nevada – No Wyoming – Yes
Improves governance and protects individual family members from liability	Definitely – If structured properly	Less protection
Interstate Administration allowed	Yes, if reciprocity	Not generally available with unregulated
Investment advisors exemption	Yes (If state level of regulation acceptable to SEC)	No
Common trust funds & Business Trusts	Yes (proposals – regulation key to SEC exemption)	No (proposals – subject to SEC regulation)
Capital required	Yes: SD $200,000 (Family & Commercial) NV $300,000 (Family) $350,000 (10/10) - $500,000 (10/12) (Commercial) NH $500,000 (Family & Commercial) WY $500,000 (Family & Commercial)	No – but should capitalize so can't pierce corporate veil. Note: Even with capital, protection not as good as regulated
Policy & Procedures Required:	Yes	No – another opportunity to pierce corporate veil.
Tax sensitive trust distributions	More protection	Less protection

Summary: Based on the factors listed above, regulated trust companies are typically a safer option than unregulated regarding the <u>possibility of piercing the corporate veil</u>, as well as other key reasons listed above.

Domestic PFTC Situs Comparison Summary

	New Hampshire	Nevada	South Dakota	Wyoming
Ranking*	#3 (2007), Honorable Mention (2010), Rated #5 (2012)	#9 (2007), #1 many categories (2010/2012)	#1 (2007), #1 all categories (2010/2012)	#9 (2007), Honorable Mention (2010/2012)
RAP	Unlimited Duration; Follows Murphy Case Post 1986	365 years; “Timing” Only (Problematic?)	Unlimited Duration; Follows Murphy Case and pre-1986 (Excellent)	1000 Years; “Timing” Only (Problematic?)
Purpose Trust Statute:	Yes	Yes (Pets Only)	Yes (Perpetual)	Yes
Directed Trust Statute	Yes	Yes (New)	Yes	Yes
Trust Protector Statute	Yes	Yes (New)	Yes	Yes
Modification/ Reformation/ Decanting Statutes	Yes	Yes	Yes	Yes
Unregulated Entities allowed for Committees and Protectors	No	Yes	Yes (statute)	Yes
Self-Settled Statutes	Yes (1/09)	Yes	Yes (Broad)	Yes
Third Party Discretionary Trusts – Not Property Interest	No	Yes	Yes	No
Sole Remedy Charging Order: both LLC/LP	No	Yes	Yes	Only LLC
State Income Tax	No	No	No	No
State Insurance Premium Tax	125 basis points	350 basis points	8 basis points	75 basis points
Privacy	Open	Open (Courts Option)	Total Seal Forever	Open
Private Family Trust Companies	Yes, Regulated (New)	Yes, Previously Unregulated Unless Commercial New Regulated?	Yes – Excellent Statutes and Extensive Experience, Regulated - Families	Mainly Unregulated
Accredited State Banking Department**	No	No	Yes	Yes

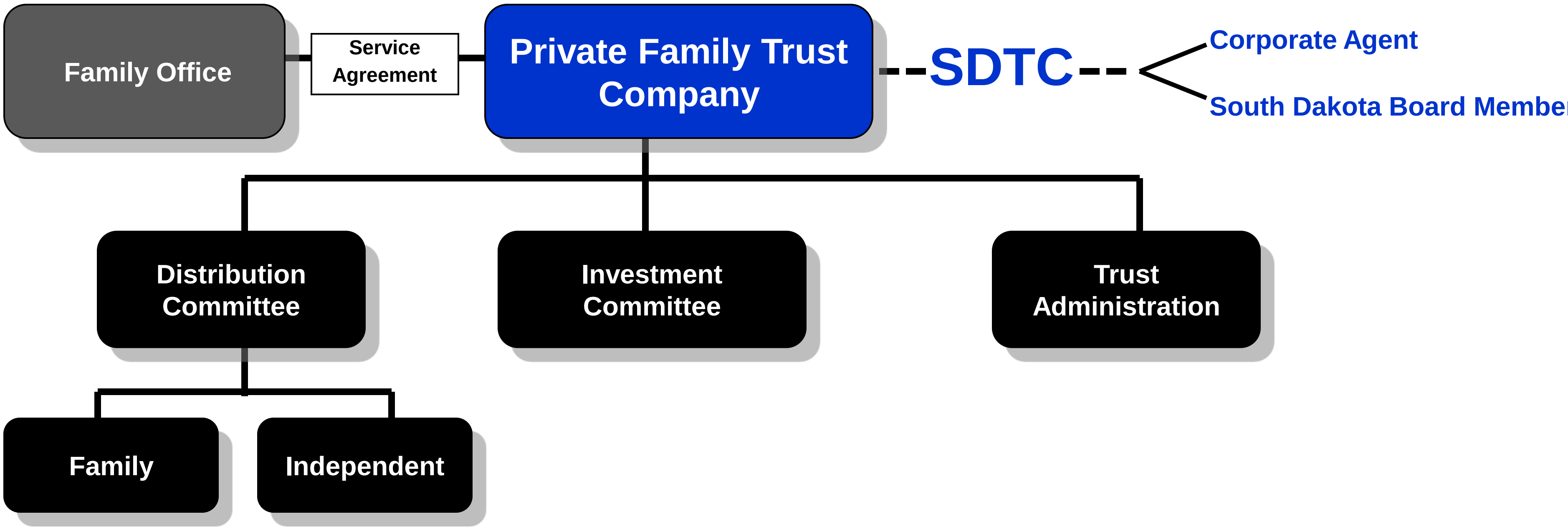
Please See: *“Perpetual Trust States: The Latest Rankings” by Dan Worthington, Trusts & Estates: January 2007), “Which Situs is Best?” by Dan Worthington & Mark Merric, Trusts & Estates: January 2010. ”Which Trust Situs is Best in 2012?” by Dan Worthington and Mark Merric, Trusts & Estates: January 2012;*

***- Conference of State Banking Supervisors (CSBS)*

Organizational Structure and Ownership

- PFTC **ownership varies** with **each family** experience = **flexibility**:
  - **Organizational Structure** - Three primary entity choices for PFTC:
    - **"C" Corporation** – two levels of taxation;
    - **"S" Corporation** – pass through entity; owner may build basis;
    - **"LLC"** – most flexibility; pass through entity;
  - **Ownership Structure**:
    - Senior members outright;
    - Senior members through their trusts;
    - Dynasty trust owned by family members; and
    - Special Purpose trusts.

Example - Typical Modern South Dakota PFTC Structure Promoting Flexibility and Control



Step 1: Form a SD LLC and apply to SD Banking Commission to be a PFTC

- Need office in South Dakota, one SD Board Member, and a SD Corporate Agent – SDTC sits on the board and serves the role as corporate agent i.e. providing office space to PFTC, collecting mail and answering the phone.

Step 2: South Dakota PFTC leases services from FO in another state.

Step 3: Trust administration can be done in South Dakota to benefit from South Dakota's favorable trust laws by hiring SDTC as trustee agent for PFTC [or] administration can be done in another state (interstate administration allowed) by family office and its advisors. The latter will not garner the benefits of South Dakota trust and tax laws.

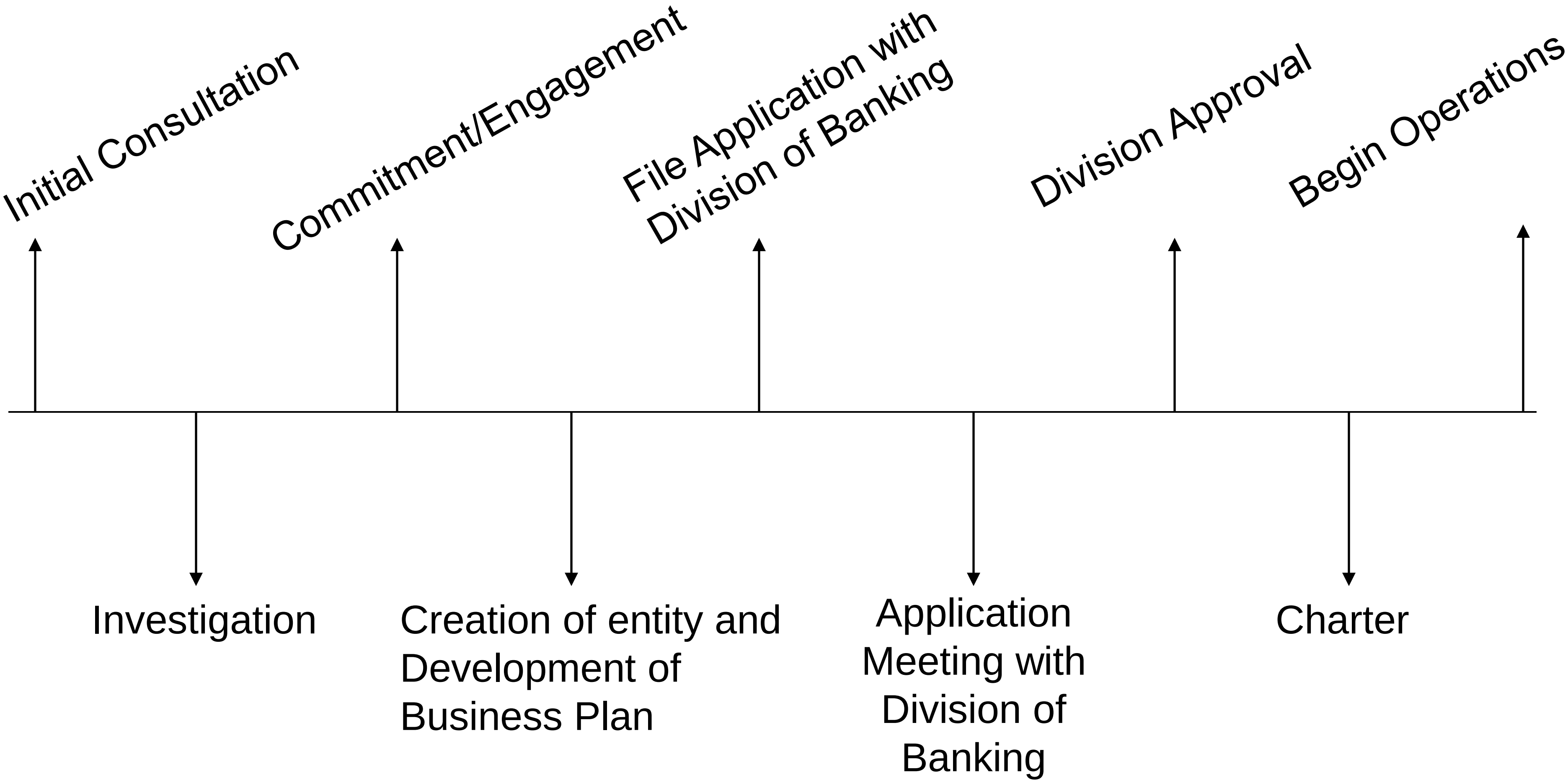
Example - Overview of South Dakota Application/Set-Up Process

- **Application Process and Set-Up:**
  - 4-6 months (minimum 30 days once application complete);
  - Work with attorneys;
  - Consult and guide the application process;
  - Application is private.

- **Application Requirements:**
  - Capital ($200,000 in South Dakota);
  - $1,000,000 bankers fidelity bond and D&O coverage;
  - At least 3 directors (1 from South Dakota) – no more than 12 total.

- **Board members must attend meeting in SD with Division of Banking as part of application process.**

Necessary Steps to Create PFTC



Example – South Dakota Operational Requirements

- **Private Trust Company** must maintain a **minimum presence** and provide the following**:**
  - An office in South Dakota;
  - Staffed by at least one person;
  - Open during normal business hours;
  - All trust company records must be maintained in office;
  - Should support and promote the public good.

➢ **SDTC will provide all of these services as part of service agreement!**

- **Annual Shareholder Meeting;**

- **Quarterly Meetings;**
  - None have to be in South Dakota – although usually a good idea;
  - If utilizing SD for tax situs, then should meet in SD and make all trust decisions in SD.

Operation of Private Family Trust Company

- **Operation** of **Private Trust Company** **depends in part on**:
  - **Structure** and **Governance**:
    - Family members;
    - Multi-generational membership;
    - Non-family members;
    - Advisors;
  - **Role of Family Office** as Service Provider;
  - **Experience of Family Office/Trust Company** personnel;
  - **Fiduciary Experience** of Family and/or Staff.

Operation of Private Family Trust Company (cont'd)

- **Documentation**:

  Very important for good governance and examination!

  - **Shareholder**, **Board** and all **Committee meeting minutes**;
  - **Annual Account Reviews**;
  - **Transactions** – including Distributions;
  - **Strategic** and **Succession Planning**;
  - Be sure to **document operation** of **Trust Company separately from Family Office**!

Operation of Private Family Trust Company (cont'd)

- **Develop a matrix of duties/responsibilities for your Trust Company**:
  - **Set meetings:**
    - Board meeting;
    - Committee meetings if necessary;
    - Annual shareholder meeting;
  - **Assign operations function:**
    - Use trust accounting system or rely on Family Office system/staff;
  - **Perform annual trust review:**
    - Administration;
      - Includes review of distributions;
    - Investments;
  - **Develop audit program:**
    - Internal vs. External;
    - Financial;
    - Operations (Agreed upon Procedures);
  - **Identify reporting deadlines for:**
    - Annual report;
    - Annual LLC report;
    - Tax filings (South Dakota Franchise Tax).

Example - Trust Administration in PFTC State (South Dakota)

- **Trust Administration**:
  - Trust administration may be performed by Trust Company or delegated to third party such as the Family Office.
  - Also, the administration may be delegated to SDTC– which will serve as an agent to provide trust administration. This arrangement helps establish nexus with South Dakota.

- **Nexus with South Dakota for Tax Purposes**:
  - Trustee must be domiciled in South Dakota;
  - Official books and records must be kept in South Dakota office, which include:
    - Trust documents;
    - Board minutes;
    - Reviews;
    - Other trust documentation;
  - Majority of the investment decisions must be made in South Dakota, which is satisfied by conducting the Investment Committee meeting in South Dakota. This includes reviewing, monitoring and making the investment decisions in South Dakota;
  - Majority of the distribution decisions must be made in South Dakota, which is met by conducting the Distribution Committee meetings in South Dakota;
  - Tax returns are prepared and mailed from SD.

Where Does the IRS Stand on PFTCs?

- **Private Family Trust Company** - Too Much Family Control?
- **Trust creators** and **trust beneficiaries** as **PFTC owners**
- **Private Letter Rulings**: **PLR 200546055**, **PLR 200548035**, **PLR 200523003**
  - **Integrate independent people** on:
    - LLC Board of Directors
    - Distribution Committee
    - Investment Committee
- **IRS Revenue Notice 2008-63**; **2008-31 IRB (July 11, 2008):**
  - **IRS Revenue Notice 2008-63** addresses income, gift, estate and GST tax consequences in situations where family members create private trust companies to serve as trustee of family member trusts of which the family members are grantors or beneficiaries. IRS ruled that there were no negative tax consequences, if properly structured.

Example - Summary of South Dakota Regulated Private Family Trust Companies

- **Application Process/Expense and Set-Up:**
  - 4-6 months ($5,000 application fee);
  - Application is private;
  - $200,000 Capital (lowest required by any regulated state);
  - Public Notice (all states have this);
  - $1,000,000 surety bond;
  - At least 3 directors (1 from South Dakota), no more than 12 total.
  - **Board members must attend meeting in SD with Division of Banking as part of application process.**

- **Examination:**
  - One every 36 months (Family PTCs);
  - Onsite – Policy and Procedures Manual, LLC and other organizational documents, Board Meeting Minutes, etc.;
  - Most other books and records – available electronically;
  - SDTC assists with PFTC audits and generally charges hourly.

- **Board meetings:**
  - Quarterly (SD member present in SD as corporate agent – SDTC serves this role);
  - Family may or may not be in SD for meetings – telephonic usually OK. Usually choose one meeting a year to attend in SD and rotate family board members for annual SD trip (usually summer).

- **Physical Office Requirement/Corporate Agent:**
  - South Dakota Trust Company LLC serves as SD Board member, attends quarterly board meetings, provides office space, collects mail and forwards, answers phone.

- **Trust Administration:**
  - South Dakota Trust Company can act as agent and provide administration for South Dakota law trusts or other state law trusts [or];
  - Trust administration can be done in another state, but without the benefit of SD law and taxes.

Q & A Discussion

What is a Dynasty Trust?

- **Definition**:

  A Dynasty Trust is a **generation skipping trust** to **benefit one's family intergenerationally** (spouse, children, grandchildren and possibly great grandchildren and unborns) **lasting as long as state law will allow**.

- **Purpose**:

  To combine **transfer tax savings**, possible state **income tax savings** and **asset protection** while acting as a **family bank** and **promoting fiscal and social responsibility** within the family intergenerationally.

Two Types of Family Bank Dynasty Trusts –

Testamentary (Fund at Death) and Inter-vivos (Fund during Lifetime)

Scenario #1- Testamentary GST Trust

Will

Marital Trust

Estate Tax Exemption Trust

(1)

(2)

Testamentary Dynasty Trust

(3)

Scenario #2- Wills Pour Over at Death to Revocable Trust with Dynasty Trust in Favorable Dynasty Trust Jurisdiction:

- Will: Marital + Non-marital Trust
- Combine with Pour Over Revocable Living Trust with Dynasty Trust Provisions
  - Dynasty Trust Awaiting Pour Over from Will at death.

Scenario #3- Inter-vivos (Lifetime) Dynasty Trust

Will

Inter-vivos Dynasty Trust

- Utilizing $5.12 MM Gift Exemption ($10.24 MM per married couple)
- $5.12 MM of GST Exemption Per Spouse

Marital Trust

Estate Tax Exemption Trust

The Advantages of the Inter-vivos (Lifetime) Dynasty Trust Vs. the Testamentary (Death) Trust or Doing No Planning

	No GST Planning	Testamentary GST Planning	Lifetime Planning (i.e. Dynasty Trust)
Initial Amount	$1,550,000	$1,550,000	$1,550,000
Taxable Gift	$0	$0	$1,000,000
Gift Tax	$0	$0	$550,000
Net	$1,550,000	$1,550,000	$0
Net to Great-Great Grandchildren	$19,067,472	$42,554,950	$134,446,927
Increase	$0	$23,491,997	$115,929,455

*** Please note:** *The Above analysis is based upon 7% growth rate.*

How the Lifetime (Inter-Vivos)Family Bank Dynasty Trust Fits into the Overall Estate Plan

Will and/or Revocable Living Trust:

Marital Trust

Funded at Death

Non-Marital Trust

Funded at Death

Domestic Asset Protection Trust (DAPT):

- Self Settled
- Grantor Remains Permissible Discretionary Beneficiary
- Purposefully Included in Estate
- Grantor Trust for Income Tax Purposes, i.e., Taxed to Grantor
- Funded Lifetime
  - > Generally 10-40% of Assets
- Situs in Self Settled Trust State (i.e., Alaska, Delaware, Nevada or South Dakota)

Family Bank Dynasty Trust:

- Third Party*
- Excluded from Estate
- Generally Grantor Trust (Initially)
- Funded Lifetime, death, or both
- Situs either in Grantor's resident state [or] in another Dynasty State (i.e., Alaska, Delaware or South Dakota)
- Multigenerational

* Please Note: Dynasty Trust can also be Self Settled. Please be cautious of Private Letter Ruling 200944002 and IRC 2036, if Self-Settled.

Trusts Often Used to Supplement the Above:

Grantor Retained Annuity Trust (GRAT)

Charitable Trusts:

- Charitable Remainder Trust
- Charitable Lead Trust
- Private Foundation

Purpose Trusts:

- Pets
- Key Family Assets
- Private Family Trust Company

(Delaware & South Dakota)

Transfer Tax Consequences of a Lifetime (Inter-Vivos) Dynasty Trust

- **Transfer Tax Consequences**: In order to properly establish an Inter-vivos (lifetime) Dynasty Trust one must utilize both their gift tax and GST tax exemptions:
  - **Gift Tax Exemption**:
    - $5,120,000 (2012)
    - $1,000,000 (2013)
  - **Generation Skipping Transfer (GST) Tax Exemption**:
    - $5,120,000 (2012)
    - $1,360,000 (2013)
  - **Estate and GST Taxes**: Avoided until the trust ends (some states perpetual).

Please Note: A Dynasty Trust **can also be funded at death** (i.e., testamentary) but this is much **less advantageous** than when funded during one's lifetime; plus the **$5.12 million exemptions may not be around** unless one dies in 2012 with current law in place.

Current Status of Transfer Taxes

	2009	2010 (Repeal)	2011	2012	2013
Gift Tax Exemption	$ 1,000,000	$ 1,000,000	$ 5,000,000	$5,120,000	$ 1,000,000
Maximum Gift Tax Rate	45%	35%	35%	35%	55% with 5% surcharge on cumulative gifts between $10,000,000 and $17,184,000
Estate Tax Exemption	$ 3,500,000	Unlimited	$5,000,000	$5,120,000	$ 1,000,000
Maximum Estate Tax Rate	45%	N/A	35%	35%	55% with 5% surcharge on estates between $ 10,000,000 and $ 17,184,000
Exemption from GST Tax	$ 3,500,000	Unlimited	$5,000,000	$5,120,000	$ 1,000,000 indexed for inflation since 2001 ($1,360,000)
GST Tax Rate	45%	None	35%	35%	55%

Two Types of Dynasty Trusts For Income Tax Purposes - Grantor and Non-Grantor

- **Non-Grantor Trust** – Trust is a **separate taxpayer** responsible for paying **federal** and **state income** and **capital gains** taxes:
  - Usually funded with **growth assets** so **income taxes** are **minimized** (also no tax with insurance if purchased by the Trust);
  - **Quarterly estimated payments** due to federal and possibly the state;
  - **Distributions** to beneficiaries are **taxed** in beneficiary's resident state in year received;
  - Generally a non-grantor trust is **desired** when **large capital gains** or **sale of assets** are anticipated (i.e., business, stock, etc.);
  - If **non-grantor trust** is sitused (i.e., administered) in a **no income tax trust state**, then the state **income tax** and **capital gains taxes** will be saved. These states are:

» Alaska	» Nevada	» Washington
» Delaware	» New Hampshire	» Wisconsin
» Florida	» South Dakota	» Wyoming

- **Grantor Trust** – Usually the choice for a Dynasty Trust initially to grow and leverage;
  - Then shift to non-grantor trust status when the assets are sold.

Two Types of Dynasty Trust For Income Tax Purposes - Grantor and Non-Grantor (Cont'd)

- **Grantor Trust**: **Grantor** treated as "**owner**" of **Trust property** for **income tax purposes**, **but not** for **transfer tax purposes**:
  - **Grantor trust** is **not taxed** for **estate** tax purposes and/or **GST** tax purposes;
  - **Grantor** **pays** **income tax** on Trust;
  - **Tax free gift** to **beneficiaries** – Trust grows faster;
  - Draft **Trust** to **intentionally violate** **grantor Trust provisions** IRC Sections 671-677;
  - **Grantor** **can be** **reimbursed** for **income taxes paid** on a **discretionary basis** (revenue ruling 2004-64);
    - Asset Protection
  - **Trust Protector** can switch off grantor Trust status as well as turn it on;
  - **Allows** for powerful **Promissory Note Sale** strategy:
    - Funding Trust with $5 million justifies $45 million Promissory Note Sale.

How Long Can a Dynasty Trust Last – Depends on State Law

Common Law Rule Against Perpetuities States (90-110 years)	Uniform Statutory Rule Against Perpetuities (USRAP) States (90 years)	Term States**	Unlimited Duration States (Listed Chronologically by Year of Statute Enactment)
Alabama	Arkansas	Delaware*** (Real Estate 110 years)	Idaho* (1959, Pre-1986)
Arkansas	California	Alaska (1000 years) w/ LPofA	Wisconsin* (1967, Pre-1986)
Iowa	Connecticut	Colorado (1000 years)	South Dakota* (1983, Pre-1986)
Mississippi	Georgia	Florida (360 years)	Delaware* (1995)
New York	Indiana	Washington (150 years)	Alaska* (1997, 2000)
Oklahoma	Kansas	Wyoming (1000 years)	Arizona (1998)
Texas	Massachusetts	Utah (1000 years)	Illinois (1998)
Vermont	Minnesota	Nevada (365 years)	Maryland (1998)
	Montana	Tennessee (360 years)	Maine (1999)
	New Mexico		New Jersey* (1999)
	North Dakota		Ohio (1999)
	Oregon		Rhode Island (1999)
	South Carolina		Virginia (2000)
	Virginia		Missouri (2001)
	West Virginia		Nebraska (2002)
			Washington D.C. (2002)
			New Hampshire* (2006)
			North Carolina* (2007)
			Pennsylvania (2007)
			Michigan (2008)
			Hawaii (2010)
			Kentucky (2010)

*** Generally place real estate in LLC, hence subject to unlimited duration.

* Eight states follow the Murphy case in whole or in part re the method for abolishing their RAP by dealing with both the required "vesting" and "timing" issues associated with the RAP. The IRS acquiesced in the Murphy case, which allows for an unlimited trust duration.

** Please note the term states do not address both the required vesting and timing issues associated with the RAP and the IRS may only recognize 90 years.

Example: Typical Modern Directed Dynasty Trust Structure

with a Trust Protector Promoting Flexibility and Control

Trust Protector

(Family, Friends or Advisors)
(Fiduciary, Not Trustee)

Powers Include:

- Terminate the Trust;
- Modify or Reform the Trust;
- Veto or Direct Trust Distributions;
- Add or Remove Beneficiaries;
- Change Situs and/or Governing Law of the Trust;
- Appoints Successor Trustees & Fiduciaries;
- Replaces Trustees and Fiduciaries.

Distribution Committee

(Fiduciary, Not Trustee)

Directs Administrative Trustee Re Distributions

Independent Committee

(Tax sensitive distributions)

Family Committee

(Non-tax sensitive distributions)

Investment Committee

(Family & Family Advisors)
(Fiduciary, Not Trustee)

Directs Administrative Trustee Re Investments

- Stocks & Bonds
- Insurance
- Art
- FLPs
- LLCs
- Real Estate
- Private Equity
- Closely-Held Stock

Administrative Trustee

(i.e., Sitused in Delaware or South Dakota)

- Ownership of Assets
- Establish & Maintain Trust Bank Account
- Prepare & Sign Trust Tax Return
- Trust Statements
- Make Distributions
- Receive Contributions
- Take Direction from:
  - Investment Committee
  - Distribution Committee

***Combine all functions → Full Trustee**

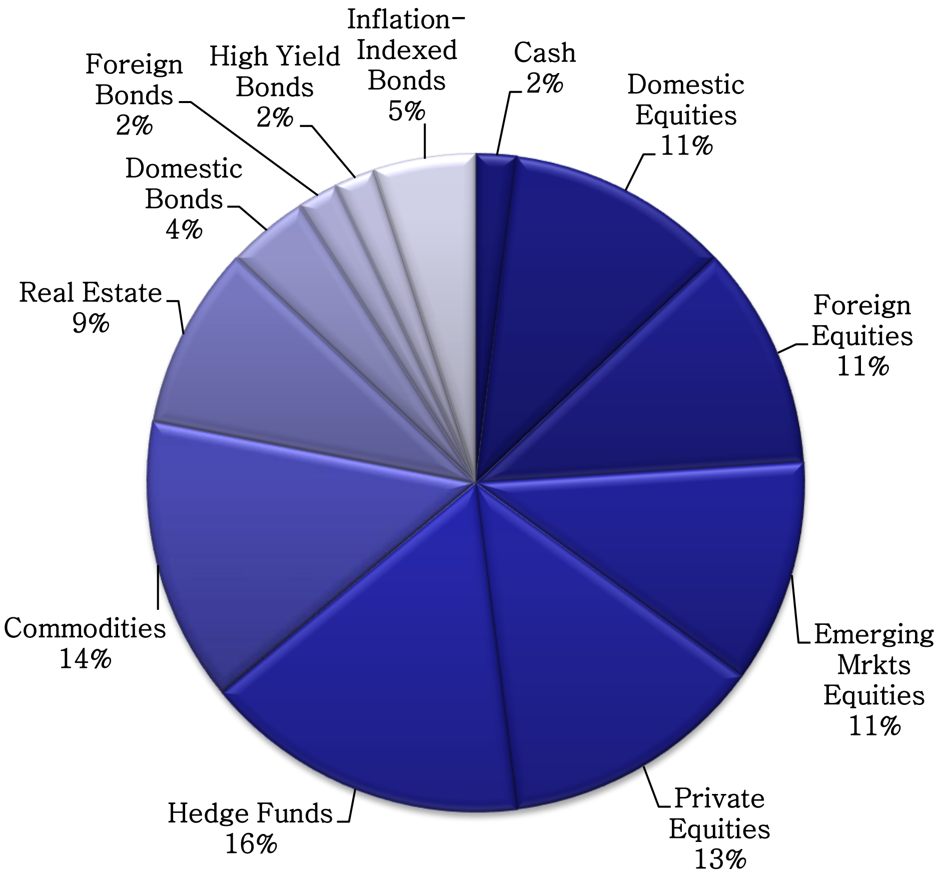
Types of Trust Administration for a Dynasty Trust

- **“Directed” Trustee** – **Trifurcates** the **traditional trustee role** to **investment & distribution committees** and an **administrative trustee**:
  - **Section 185 2^{nd} Restatement of Trusts** – the administrative trustee is generally not liable for following the instructions of an empowered person (i.e., investment and/or distribution committees) within the trust instrument – State Statutes.
  - The **administrative trustee** has **no discretionary investment (3^{rd} party) duties** regarding the trust. The selection of investment managers is generally the responsibility of the investment committee run by the family.
  - The **administrative trustee** takes **direction** from either a **co-trustee**, **trust advisor**, **investment committee**, or LLC regarding both investments and distributions.
  - **State statutes** and the **trust document** **exonerate** the **administrative trustee** from taking direction for investments and/or distributions. Typically “gross negligence and willful misconduct statutes”.
    - **Please Note:** Some advisors utilize “directed” trust language without state “directed” trust statutes (not as powerful).
  - **State Statutes** – Not all states have directed trust statutes (i.e., Alaska, Delaware, Nevada, New Hampshire, South Dakota and Wyoming)
- **“Delegated” Trustee** – Trustee delegates to outside investment advisors following the procedures below:
  - **Due Diligence on Selection of Investment managers for the trust (i.e., those being delegated to)** – Experience, track record, ADV, Compensation, Duration
  - **Monitoring of trust investment managers being delegated to** – Asset allocation, FMV Drop, Large Concentration, Investment
  - **Trust Investment Policy Statement** – Drafted by both trustee and investment advisors & managers, and updated and reviewed at least annually.
  - **Exoneration** for **testamentary trusts** **not** **allowed** in **many jurisdictions** (Example: NYEPTL 11-1.7)
  - **State Statutes** – Delegated Trust statutes available in all 50 states.

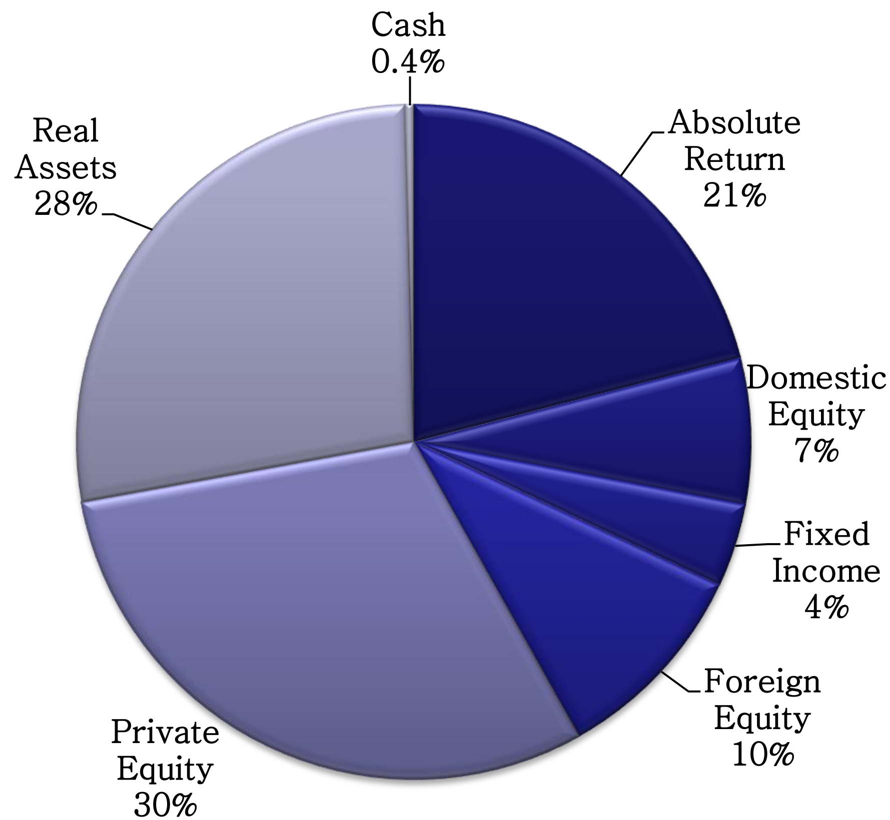
Comparison of a “Directed” & “Delegated” Dynasty Trust

	Individual Delegated Trustee	Corporate Delegated Trustee	Directed Trust Structure with Administrative Trustee
Family & Friends Can Control Investments	Yes	Not Usually	Yes
Trustee Initial Due Diligence and Quarterly Monitoring of Trust Assets	High Level (Need to document file)	High Level (Need to document file)	Low Level (Left to Trust Family Investment Committee)
Family & Friends Can Control Distributions	Yes (Need Independent Trustee for tax sensitive)	Not Usually, Unless Co-Trustee	Yes as Distribution Committee Fiduciaries (Need Independent distribution committee member(s) for tax sensitive)
Personal Liability (For Investment & Distribution Decisions)	Yes, as a Individual Trustee or Co-Trustee (High)	Yes, as a Individual Co-Trustee with Corporate Trustee (High)	Yes, but very limited and only as a fiduciary (not trustee) running the investment and/or distribution committees with gross negligence or willful misconduct standard
Trust Protector	Not Usually	Not Usually	Yes
Power to Remove Trustee and/or Fiduciary	Yes	Yes	Yes
State Income Tax	Yes	Yes	No
Asset Diversification Requirements	Yes	Yes	No
Broad Based Investments Allowed in the Trust (Investment Flexibility)	No	No	Yes

Investments – Allocation of Investable Assets Overseen by University Endowments



Source: *Harvard University Endowment, Harvard Management Company, 2011*



Source: *Yale University Endowment, Yale University Investments Office, 2011*

Typical Trust Protector Powers
(Vary by State Statute)

- Flexibility
  - Future Circumstances
  - Drafting
- Personal vs. fiduciary powers
  - No personal gain, duty of loyalty & impartiality, actions for good of trust & beneficiaries
- Power to remove or to replace trustees
- Power to veto or direct trust distributions
- Power to add or remove beneficiaries
- Power to change situs and the governing law of the trust
- Power to veto or direct investment decisions
- Consent to exercise power of appointment
- Amend the trust as to the administrative and dispositive provisions
- Approve trustee accounts
- Terminate the Trust

Selected States with Trust Protector Statutes:		
» Alaska	**» Hawaii**	**» New Hampshire**
» Arizona	**» Idaho**	**» South Dakota**
» Delaware	**» Nevada**	**» Wyoming**

Special Purpose Entity or Trust Protector Company

(i.e., Delaware, Nevada, South Dakota & Wyoming)

Example of South Dakota Special Purpose Entity:

Special Purpose Entity (LLC)

- Trust Protector
- Investment Committee
- Distribution Committee

– **Not a trust company**

– **D&O, E&O Insurance**

Directs →

South Dakota Trust Company, LLC

- Directed Trust
- Administrative Trustee

- **Trust Protector**, **Investment Committee** and **Distribution Committee** are **housed** in an **LLC** **acting** as **agents or employees** of the LLC to further **tie** the **trust** to the **favorable situs state** and **reduce** their **liability** by purchasing insurance (D&O) as well as **provide** **continuity**.

Dynasty Trust
Asset Protection

- **Types of Distribution Standards:**
  - **Mandatory** Income and/or Principle (Not Recommended)
  - **Support** (Health, Education, Maintenance & Support/HEMS) – O.K.
  - **Discretionary** (Best)
  - **Incentive** Trust (also Discretionary)

- **Levels of Protection**:
  - **Discretionary** Distribution Standards
    - **Added protection - Delaware, Nevada and South Dakota**: Discretionary interest in trust is not defined as a property right but a mere expectancy
  - **Spendthrift** Clause
  - Placing Trust assets in a **LLC** – **Sole remedy charging order** as **exclusive remedy** (creditors only have right to receive a distribution when and if one is made – no method to force a distribution)
  - **Best LLC States**: Alaska, Delaware, Nevada, South Dakota & Wyoming

Miscellaneous Asset Protection Considerations

- <u>**Reimbursement of Attorney Fees**</u>:
  - <u>**DE**</u> & <u>**SD**</u>**:** any prevailing party
    - If DAPT is sued and lawsuit unsuccessful, the trust is reimbursed for legal fees
  - <u>**AK**</u>**:** only if trust is void or set aside
  - <u>**NV**</u>**:** only to prevailing petitioner (petitioner must be beneficiary or trustee)

- <u>**Privacy**</u> – National trend is public regarding any court matters involving Trusts including reformations/modifications, lawsuits, etc…:
  - <u>**AK**</u>**:** Up to a court
  - <u>**DE**</u>**:** Up to a court (limited 3 years)
  - <u>**NV**</u>**:** Up to a court (not perpetual)
  - <u>**SD**</u>**:** Automatic seal in perpetuity

Keeping Dynasty Trust a Quiet to Beneficiaries – Selected Beneficiary Notice Statutes (Notice of Trust/Trust Assets)

- **South Dakota**: Ability to waive beneficiary notice of trusts assets. **Trust document** provides:
  - The **settlor**, **trust protector** and/or **advisor**;
  - The **ability** to **expand**, **restrict**, **eliminate**, or **modify**
  - The **rights of beneficiaries** to receive **trust information**;
  - **Sample Trust Provision Notice**: "I hereby direct that the Trustee is not required to provide the notice set forth in SDCL § 55-2-13 to qualified beneficiaries."
- **Alaska** allows for beneficiary waiver of notice but limits settlor to exempt the trustee from the notice requirements during the **life of the settlor** or until the **settlor's incapacity**, whichever is shorter;
- **Delaware** does allow for the waiver of beneficiary notice but does **not expressly allow** for the trust **advisor** or **protector** to **modify notice** to beneficiaries.
- **Nevada** is **silent** on **waiver** of notice to beneficiaries.

Powerful Strategy – Promissory Note Sale to a Defective Grantor Dynasty Trust

- **Sale** to a defective grantor Dynasty Trust
- In **Exchange** for the Trust's **Promissory Note** with periodic interest payments (at least annual) for a period of years with single balloon payment of principal at end of period
- Promissory Note is **secured by Trust Assets** Sold to the Trust and Authorizes Repayment of Principal Without Penalty
- Trust Excluded for estate Tax Purposes, so **Income and Principal** are **Taxed to Grantor** (Revenue Ruling 85-13):
  - No Gain or Loss on Sale to Trust
  - Grantor Not Taxed Separately on Interest payments of the Note
- **Estate Tax Savings** if Trust has a Total Net Return In Excess of Note Interest Rate
- **Self Canceling Installment Note** (SCIN)

Dynasty Trust – Enormous Size Potential

- **Assumptions** - $5 million Gift to Trust; Trust lasts 150 years and earns 3% after-tax; 46% transfer tax every 30 years
  - Three Generation GST Trust - $68,323,832
  - Dynastic trust - $433,901,284

Number of Years	Value of Perpetual Dynasty Trust After # Years	Three Generation Dynasty Trust (i.e., Common Law or USRAP State)
31 Years	$12,500,402	$12,500,402
61 Years	$30,341,756	$30,341,756
91 Years	$73,647,406	$73,647,406 ($33,877,807) Taxes $39,769,599
121 Years	$178,761,584	$52, 126,878
151 Years	$433,901,284	$68,323,823

Promissory Note Sale to Defective Grantor Dynasty Trust

- **Assumptions**:
  - – $5 Million Gift to Trust- 150 Years
  - – $45 Million Promissory Note- Post Discount ($64,286,000)
  - – 9 YR Note- 1.30% Mid Term Rate (May 2012)
  - – 46% Estate Tax Rate (30 Years Per Generation)
  - – 3% After Tax Return

Number of Years	Value of Perpetual Dynasty Trust After # Years	Three Generation Dynasty Trust (i.e., Common Law or USRAP State)
9 Years	$39,459,211	$39,459,211*
39 Years	$95,777,863	$95,777,863
69 Years	$232,478,012	$232,478,012
99 Years	$564,285,154	$564,285,154 ($259,571,171) Taxes $304,713,983
129 Years	$1,369,668,176	$399,395,240
159 Years	$3,324,544,163	$523,496,022

*Does Not Include State Income Taxes

Promissory Note Sale –
Family Bank Dynasty Trust Leveraging Strategy

Grantor

Gifts $1MM

– Allocates $5MM of Gift Exemption
– Allocates $5MM of GST Exemption (2012)

Promissory Note Sale of Assets to Trust

– Up to 9 times $5MM funding amount (or $45MM)
– Note Term: 3-20 years (Generally 9 years)

Interest Only Balloon Note Back to Grantor

– Interest for 9 Years (Not Taxed)
– Interest based upon IRS 1274 Rates (1.30% May 2012)
– Balloon Principal Payment in Year 9 of $45MM
– Initial Gift and Growth remain in trust after balloon note payment, for beneficiaries; possibly fund another Promissory Note Sale

Multigenerational Trust

✓ $5MM Initial Gift

✓ Growth on Initial $5MM Gift

✓ Growth on $45MM Promissory Note in excess of 1274 rate for 9 years

Beneficiaries

<u>Please Note:</u> If married, it is possible to make an initial gift of $10MM and therefore a $90MM Promissory Note or if maximize current Gift and GST Exemptions up to $5MM per spouse resulting in a $50MM Note for one spouse or a $100MM Note for both spouses .

Defined Value Transfers Regarding Promissory Note Sales – Protect Against Appraisal Risk

- **Larger Gift Tax Exemptions** ($5MM)
  - **Larger Gifts** & **Installment Sales**
  - More **Appraisal Risk**

- **Example**:
  - $5MM: Gift to Dynasty Trust
  - $45MM: Promissory Note Sale with Discounted Asset
  - $50MM: IRS Determined Value of Discounted Asset
  - Problem?
  - **Solution:** Defined Value Transfer

- Defined Value Transfer: Expresses transferred asset as **dollar value** [vs.] **percentage interest** [or] **number of units**

- **Example**: $X to Dynasty Trust as Promissory Note Sale

[and]

Balance to GRAT as a gift

Arbitrage Over Note Interest of 1.30% (as of May 2012)

- **$5MM** Gift **Down Payment**
- Up to **$45MM**- Promissory Note (S)
- Typically **3-20 Year Note** (Usually 9YR Note)
- **1.30% Interest** on **$45MM 9YR Note**- **$585,000**
  - Interest tax free to Grantor (revenue ruling 85-13)
- If **asset returning more** than **1.30%** the **Arbitrage remains** in the **trust** for **heirs**:
  - Can be used by trustee to **buy real estate** for beneficiaries, buy **life insurance**, **invest**, etc.…
- **Examples** of Possible **Assets** to **Create** the **Arbitrage**:
  - Closely-Held Stock
  - Investments
  - Rent from Residential or Vacation Homes

Designing the Incentive Family Bank Dynasty Trust

- **Best**: If "**Directed**" regarding **trust administration** and **discretionary** regarding **distributions**.
- **Incentive Trust Defined**: Trusts with provisions designed to **encourage** or **discourage** certain **types of behavior**.
  - Trying to **help beneficiary recognize** some aspect of **what got grantor** to where they got so that some aspect of **grantor's heritage** can be **valued** and **perpetual** (*Calibre*).
  - "Leave kids enough to do anything, but not enough to do nothing" - Warren Buffet
  - Remember **values** and **names** of great-grandparents
  - Promoting **social** & **fiscal responsibility within** the **family** (family values)
  - **External Motivation:** (act done for outward reward or fear of failure)

    [versus]

    Internal Motivation (act done for its own sake and because they enjoy it, i.e. enthusiasm and passion)
  - **Motivation Summary:**
    - Want motivation to come from inside not be supplied from outside;
    - Money and material goods are external and happiness is internal;
    - Training process for families;
    - Handing down values can be achieved in a more positive, less threatening manner through charitable endeavors (*Calibre*);
    - Works best with family distribution committee in a Directed Trust

Example: Typical Modern Directed Dynasty Trust Structure

with a Trust Protector Promoting Flexibility and Control

Trust Protector

(Family, Friends or Advisors)
(Fiduciary, Not Trustee)

Powers Include:

- Terminate the Trust;
- Modify or Reform the Trust;
- Veto or Direct Trust Distributions;
- Add or Remove Beneficiaries;
- Change Situs and/or Governing Law of the Trust;
- Appoints Successor Trustees & Fiduciaries;
- Replaces Trustees and Fiduciaries.

Distribution Committee

(Fiduciary, Not Trustee)

Directs Administrative Trustee Re Distributions

Independent Committee

(Tax sensitive distributions)

Family Committee

(Non-tax sensitive distributions)

Investment Committee

(Family & Family Advisors)
(Fiduciary, Not Trustee)

Directs Administrative Trustee Re Investments

- Stocks & Bonds
- Insurance
- Art
- FLPs
- LLCs
- Real Estate
- Private Equity
- Closely-Held Stock

Administrative Trustee

(i.e., Sitused in Delaware or South Dakota)

- Ownership of Assets
- Establish & Maintain Trust Bank Account
- Prepare & Sign Trust Tax Return
- Trust Statements
- Make Distributions
- Receive Contributions
- Take Direction from: Investment Committee / Distribution Committee

***Combine all functions → Full Trustee**

Sample Incentive Family Bank Dynasty Trust Provisions

- **Promotion of Fiscal Responsibility**:
  - Draft **family mission statement** [and] **videotape family goals** (transcribe);
  - **Incentive Clauses** (i.e. $2 of trust income for each $1 of W-2 income) – exceptions, i.e. **disability**;
  - **Distribution audit** to determine suitability of future distributions – Cap distributions based upon beneficiaries' net worth indexed for inflation;
    - Assumption **$7.5MM enough to live well**, but have to protect it (*Financial Counsel).*
  - Supplemental income for **socially responsible profession**, i.e. artist, musician, teacher, etc;
  - Monthly Stipend for **stay at home parent**, also **adult child to care for elderly relative**;
  - **Education costs** for family in perpetuity;
  - Lump sum received at **college graduation** and/or advanced degree(s) (depending upon quality, academic rigor and college reputation);
    - If stipulate 3.0 GPA, may choose easier courses.
  - Monthly payments for **Academic Excellence** ;
  - **Medical costs** for family in perpetuity;
  - **Real Estate** – "Use Factor": buy real estate for children, grandchildren within the trust and they "use" it tax free (operates as Family Time Share);
  - Clause to **encourage descendants to stay in marriage** while the children are minors – "vest" extra in trust;
  - Clause to **encourage descendants to get married** (wait until certain age, marry right person, etc.);
  - **Divorce protection**;
  - **Floating Spouse Clause** (in-laws): define in-law spouses as "spouse I am married to and living with";
  - Deny trust payments unless beneficiary has a **prenuptial agreement**;
  - **Beneficiary conflict clause** – if beneficiary sues, they get nothing;
  - Denial of distributions if beneficiary fails a **drug test** or **psychological treatment**;
  - **Family Bank**: Loan to Beneficiary (term insurance purchased to provide repayment);
  - Denial of distributions if beneficiary does not **participate in family meetings** re charitable giving, family investments, estate planning and trusts.

Sample Incentive Family Bank Dynasty Trust Provisions (Cont'd)

- **Promotion of Social Responsibility**:
  - **Prepare written document or transcribed videotape** illustrating charitable desires, goals, values and purpose (i.e. mission statement);
    - ✓ As part of trust or as letter of wishes;
    - ✓ Get buy in from family, advisors and distribution committee;
    - ✓ Education – develop a family learning plan, family/distribution committee meetings, site visits to charities, advice from other philanthropists.
  - **Charitable donations** by family in perpetuity once dynasty trust attains a certain FMV:
    - ✓ The family distribution committee makes donations from the trust directly to charity, thus actively involving the family with charities and thus promoting the family values and mission statement.
  - **If beneficiary fails to meet trust performance standards**, then funds divert to charity;
  - **Child works for charity,** family foundation, or volunteers – Supplement Income;
  - **Conservation Easement** on family residence and/or vacation home;
  - Limited powers of **appointment**/separate shares (charitable giving option);
  - **Cryogenics;**
  - **Charity gift over;**
  - **Governance** – distribution committee (possibly hire outside advisor consultants).

New Approach to Family Bank Dynasty Trust Incentive Provisions –
Providing Guidelines for Trustee Discretion

Family distribution committee makes distribution based upon following factors:

1. The ability to **live within one's means**, i.e., managing spending consistent with one's level of income;
2. The ability to **manage spending relative to income** in a manner that would be consistent with being able to save a portion of income, as needed;
3. The ability to **understand and manage credit and debt processes**, leading to avoidance of excessive debt;
4. The ability to **maintain reasonable accounting** of one's financial resources;
5. The ability to **understand and manage one's personal assets**, either using basic investment procedures and principles oneself or to delegate these actions responsibly to appropriate advisors;
6. The ability to **generate income for spending needs** if additional resources are required or desired beyond trust distributions;
7. The ability to **use of a portion of one's income and/or financial resources** to **support charitable activities** of one's choosing; and
8. The ability to **show initiative**, **engage in entrepreneurship**, and **demonstrate purpose in paid or unpaid work**.

Source: Heckerling 2011- "Use and Abuse of Incentive Trusts: Improvements and Alternatives" Jon & Eileen Gallo and James Grubman Ph.D.

Two Major Types of Irrevocable Inter-Vivos Dynasty Trusts

- **Self Settled**: **Grantor** is **permissible beneficiary** along with family and/or others;
  - Only available in 13 states with statutes:

Alaska	**Oklahoma**
Colorado	**Rhode Island**
Delaware	**South Dakota**
Hawaii	**Tennessee**
Missouri	**Utah**
Nevada	**Wyoming**
New Hampshire	

- **Third Party**: **Grantor** is **not** a **permissible beneficiary**. The only beneficiaries are family and others;
  - Available in all 50 states.

- **Please Note**:

→ **Domestic Asset Protection Trusts (DAPTs)**- Self Settled

→ **Dynasty Trusts, GST, ILITs -** Either Self Settled or Third Party

→ **GRAT**, **QPRT**, **HEET**: Third Party

Self Settled Dynasty Trusts –
Possible Negative Estate, GST and Gift Tax Consequences?

- **Gift Taxes** – PLR 9837007 (Completed Gift)

  → IRS Refused to rule whether excluded from estate.

- **Estate Taxes** – PRL 200944002 (Estate Tax Certainty?)
  - **Possible Issues** - Two prong test:

    → 2036(a) – retain
    - possession or enjoyment of property
    - right to income
    - right to designate who shall possess on enjoy property

    → 2038 – Revocable transfers
  - **Three Main Possibilities Re Grantor Trust Distributions and IRC 2036 (Self-Settled Trust)**:
    - No withdrawals – Not included in estate
    - Periodic hardship withdrawals – Maybe not included in estate
    - Live off trust – Included in estate
  - **PLR** – Does not address IRC 2036 Issues
  - **2036:** "Implied agreement can be inferred from circumstances"
- **Generation Skipping Taxes** – ETIP issue as a result of uncertainty regarding estate tax inclusion?

IRS PLR- 200944002

"We are specifically **not ruling** on **whether Trustee's discretion** to **distribute income** and **principal** of Trust to Grantor **combined with other facts** (such as, but not limited to, an **understanding** or **pre-existing arrangement** between Grantor and trustee regarding the exercise of this discretion) **may cause inclusion** of Trust's assets in Grantor's gross estate for federal estate tax purposes under **§ 2036**."

Third Party Dynasty Trust

- **<u>Third Party vs. Self-Settled</u>:**
  - **<u>Third Party</u>** – Generally the Best
  - **<u>Self-Settled</u>**: Gift Tax, Estate Tax and/or GST Issues?;
  - **<u>Trust Protector</u>** has **<u>power</u>** to **<u>add Beneficiaries</u>** (Grantor? Grantor Spouse?);
    - Use **<u>Class</u>** of **<u>Grandparents'</u>** descendents.

Miscellaneous Considerations with Family Bank Dynasty Trust Planning

- **Change of Situs Clause**:
  - Change of Situs and Change of Law
  - Onshore/Offshore
  - Inter Galactic?

- **"Descendants" – Clones?**

- **Cryogenics – Need Unlimited Duration Trust!**
  - Expenses
  - Charity

  Please Note: "Freezers – Our Future Coffins" by Al W. King III, *Trusts and Estates*: August, 2002

- **Purpose Trusts**: For non-charitable purposes and to care for "something" rather than "someone" intergenerationally in some states:
  - Pets
  - Antique Cars
  - Homes
  - Private Trust Companies

Summary of Steps to Maximize the Family Bank Dynasty Trust

1. **Use a Third Party Dynasty Trust** – with trust protector who can add grantor as beneficiary in the future (vs. Self-Settled Initially);
   - May help avoid possible estate & GST issues (see PLR 200944002);
2. **Select an unlimited trust duration *Murphy* case state**:
   - Eight states follow the ***Murphy* case** in whole or in part re the method for abolishing their RAP by dealing with both the required "vesting" and "timing" issues associated with the RAP. The IRS acquiesced in the *Murphy* case, which allows for an unlimited trust duration;
   - Trust Protector can always terminate the trust;
   - Please note that the term states (i.e., 150, 360, 365, 1000 years) do not address both the required vesting and timing issues associated with the RAP and the IRS may only recognize 90 years.
3. Select Trust situs in **no state income tax** and **"directed" Dynasty Trust** jurisdiction;
4. **Utilize Grantor trust status** initially so trust can grow tax free and grantor can do Promissory Note Sales;
   - Switch to non-grantor trust status when selling large trust assets;
5. Select **Directed Trust** **with** a **trust protector** as well as investment and distribution committees; make the Trust **discretionary** and **design** the desired **incentive clause(s)** to maximize promotion of social and fiscal responsibility within the family; and
6. **Fund** GST/Dynasty **as soon as possible** (inter-vivos/lifetime) to maximize growth and to leverage the existing $5.12 million gift and GST exemptions that will most likely not be available in 2013.

Selected "Directed" Dynasty Trust States

	Dynasty	Directed	Trust Protector	No Income Tax	Discretionary Interest and Powers of Appointment Not a Property Right
Alaska	✓*	✓	✓	✓	
Arizona	✓	✓	✓		
Colorado	1000 Years	✓			
Delaware	✓*	✓	✓	✓	✓ (One Level)
Florida	360 Years	✓		✓	
Nevada	365 Years	✓	✓	✓	✓ (Two Levels)
New Hampshire	✓*	✓	✓	✓	
Ohio	✓	✓			
South Dakota	✓*	✓	✓	✓	✓ (4 Levels – Max)
Tennessee	360 Years	✓			
Washington	150 Years	✓		✓	
Wyoming	1000 Years	✓	✓	✓	

******Murphy*** Case RAP State (IRS acquiesced in Unlimited Duration RAP) – Best Dynasty States**

What can be Done with an Existing Dynasty Trust in a State with an Income Tax and Without a “Directed” Trust and Trust Protector Statutes

- **Change Situs of the Existing Trust** – to a **state** with **“directed” trust** and **trust protector** statutes as well as **no state income tax**:
  - **Trust document** must **allow** the **appointment of a new trustee** (either additional or replacement);
  - After a **new trustee is named** to the Trust from a state with a directed trust statute and no state income tax → **Reform or Modify** the Trust by adding Directed Trust and Trust Protector provisions;

- **Reform/Modify Existing Trust after change of trust situs**:
  - Generally **keeps original state law** for **interpretation** purposes
  - Modification cannot conflict with the settlor’s “material purpose” or “probable intention”
  - Reform/Modify **administrative provisions** to either **Alaska, Delaware or South Dakota law**
    - Once trust situs is moved to Alaska, Delaware or South Dakota with the appointment of an Alaska, Delaware or South Dakota trustee.
  - **Example of Costs:** The South Dakota Reformation/Modification process is quick (averaging 2-10 days) and inexpensive (average $2,500-$3,000)
  - **Grandfathered Generation Skipping Trusts** – OK (cannot extend duration)
  - **Privacy** (SD is total seal forever; Delaware also allows the ability to seal for 3 years)
    - Most other states “open to the public”
  - ***Murphy* Case States with Reformation/Modification Statutes:** Alaska, Delaware, New Hampshire, South Dakota
  - **Virtual Representation:** Unborn beneficiaries represented: Alaska, South Dakota, Delaware (Limited)

Please see: “Trust Remodeling” by Rashad Wareh, *Trusts & Estates*, August 2007.

Alternative to Reformation/Modification – Decanting

- **Decanting**:
  - If trustee has **discretionary power** to distribute assets:
    - **Change trust situs**: Appoint trustee in jurisdiction with decanting statute
    - Generally appoint an Alaska, Delaware or South Dakota trustee who then decants
    - Distributes all assets from the old trust to new Alaska, Delaware or South Dakota Trust
    - Generation Skipping Trusts OK, but caution and cannot extend the duration beyond the existing duration.
  - ***Murphy* case States with Decanting Statutes:** Alaska, Delaware, New Hampshire, South Dakota

Please see: "Trust Remodeling" by Rashad Wareh, *Trusts & Estates*, August 2007.

Typical Estate Plan with Family Bank Dynasty Trust as the Foundation

- ✓ Will/Revocable Living Trust
- ✓ Education Planning
- ✓ Irrevocable Insurance Trust
- ✓ Private Foundation
- ✓ Advanced Trust Planning – See Below:

Asset Protection:

Self-Settled Domestic Asset Protection Trust

- ✓ Included in the estate
- ✓ Typically transfer 25-40% of assets
- ✓ Ability to get distributions as discretionary beneficiary
- ✓ Grantor Trust

Preserve Key Assets:

Purpose Trust

- ✓ Pets
- ✓ Key Family Assets
- ✓ Private Family Trust Company

Sale of Appreciated Assets:

Charitable Remainder Trust

- ✓ Sale of appreciated property without immediate income or capital gains taxes
- ✓ Income tax deduction
- ✓ Estate tax reduction
- ✓ Income to Donor and family
- ✓ Beneficiary: Fund Private Foundation or provide for charity directly
- ✓ Hedges the CLAT

Education Planning:

HEET Trust

- ✓ Education planning for children, grandchildren and other descendents in perpetuity
- ✓ Without using GST Exemption

Shifting Growth on Assets:

Dynasty Trust Grantor "Defective"

- ✓ Excluded from Estate
- ✓ Third Party
- ✓ Grantor Trust (Initially)

Promissory Note Sale
- Grantor
- Beneficiary
- SCIN

Loan

"Walton" GRAT — Sale of Remainder

QPRT — Sale of Remainder

CLAT — Sale of Remainder

PNS- Residence/ Vacation Home

Domestic Trust Situs Comparison Summary

As of 5/2012

	Alaska	Delaware	New Hampshire	Nevada	South Dakota	Wyoming
Ranking*	#3 (2007), #1 many categories (2010/2012)	#2 (2007), #1 many categories (2010/2012)	#3 (2007), Honorable Mention (2010), Rated #5 (2012)	#9 (2007), #1 many categories (2010/2012)	#1 (2007), #1 all categories (2010/2012)	#9 (2007), Honorable Mention (2010/2012)
RAP	Unlimited Duration; Partially Follows Murphy Case - 1000 year limit with LPA (Possible Issues)	Unlimited Duration; Partially Follows Murphy Case (Possible Issues with LPA)	Unlimited Duration; Follows Murphy Case Post 1986	365 years; “Timing” Only (Problematic?)	Unlimited Duration; Follows Murphy Case and pre-1986 (Excellent)	1000 Years; “Timing” Only (Problematic?)
Directed Trust Statute	Yes (Hybrid Statute)	Yes	Yes	Yes (New)	Yes	Yes
Trust Protector Statute	Yes	Yes	Yes	Yes (New)	Yes	Yes
Modification/ Reformation/ Decanting Statutes	Yes	Yes	Yes	Yes	Yes	Yes
Virtual Representation	Yes	Yes	No	Yes	Yes	Yes
Unregulated Entities allowed for Committees and Protectors	Yes?	Yes	No	Yes	Yes (statute)	Yes
Non-Charitable Purpose Trust Statute	Yes (Pets Only)	Yes (Perpetual)	Yes	Yes (Pets Only)	Yes (Perpetual) Broadest Statute	Yes
Self-Settled Statutes	Yes	Yes	Yes (1/09)	Yes	Yes (Broad)	Yes
Fraudulent Conveyance Period	4 Years	4 Years	4 Years	2 Years	2 Years (2012) 3 Years (2011)	4 Years
Sole Remedy Charging Order: both LLC/LP	Yes	Yes	No	Yes	Yes	Only LLC
Discretionary Trusts – Not Property Interest	No	Yes (Limited-1 Level)	No	Yes (Limited- 2 Levels)	Yes (Powerful - 4 levels)	No
State Income Tax	No	No: non-resident Yes: resident	No	No	No	No
State Insurance Premium Tax	10 basis points	200 basis points	125 basis points	350 basis points	8 basis points	75 basis points
Privacy	Open (Courts Option)	Seal 3 years, Then Open	Open	Open (Courts Option)	Total Seal Forever	Open
Waiver of Beneficiary Notice (Optional- Notice of Trust Assets)	Yes, during the life of settlor or until incapacity	Yes	Yes	Silent	Yes (Very Flexible Statute)	Yes
Private Family Trust Companies	Yes	Yes, But Favor Commercial	Yes, Regulated (New)	Yes, Previously Unregulated Unless Commercial New Regulated?	Yes – Excellent Statutes and Extensive Experience, Regulated - Families	Mainly Unregulated
Accredited State Banking Department**	Yes	Yes	No	No	Yes	Yes

Please See: *“Perpetual Trust States: The Latest Rankings” by Dan Worthington, Trusts & Estates: January 2007), “Which Situs is Best?” by Dan Worthington & Mark Merric, Trusts & Estates: January 2010. ”Which Trust Situs is Best in 2012?” by Dan Worthington and Mark Merric, Trusts & Estates: January 2012;*

***- Conference of State Banking Supervisors (CSBS)*

Thank You!

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If you have any questions or would like any additional information, please do not hesitate to call or e-mail us at the numbers and addresses listed above. We also invite you to visit our websites:

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Pierce H. McDowell III

Co-Chairman and Co-Chief Executive Officer, South Dakota Trust Company, LLC

Pierce H. McDowell III is currently the Co-Founder, Co-Chairman and Co-Chief Executive Officer of South Dakota Trust Company, LLC and South Dakota Planning Company, LLC. The former is a national trust boutique and financial advisory company for the wealthy based out of Sioux Falls, South Dakota and the latter an estate planning consulting firm based out of New York City. Mr. McDowell was formerly the Co-Founder and President/Chief Trust Officer of Citicorp Trust South Dakota. Due to South Dakota's attractive trust and tax legislation, Mr. McDowell is responsible for servicing the trust and estate needs of clients across the United States and world in the creation and movement of trusts to South Dakota.

Prior to joining Citibank, Mr. McDowell practiced law with Woods, Fuller, Shultz and Smith of Sioux Falls, and was formerly a Vice President, Trust Administrator and Business Development Manager for both Norwest and First Banks.

Mr. McDowell is nationally known and frequently quoted by Forbes and other publications on the advantages of South Dakota trust law. Mr. McDowell received the Citibank outstanding sales awards for both 1996 and 1998 as well as the 1997 Epic Award for his *Trusts & Estates* magazine's articles on South Dakota Trust planning.

Mr. McDowell serves on the Board of the South Dakota Planned Giving Council. He has been appointed to the Philanthropy Committee with the South Dakota State Bar Association. He is the Chairman of the South Dakota Bankers Association's Trust Committee, a member of the South Dakota Bar Association's Real Property, Probate & Trust Law section and serves on its Probate and Trust Committee and the Legislative Committee, a member of the University of South Dakota Foundation Board of Trustees, as well as a former member of the Advisory Board for *Trusts &Estates* magazine.

Mr. McDowell received a Bachelor of Science from Arizona State University and a Juris Doctor from the University of South Dakota.